

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY D. JOHNSON,

Plaintiff,

No. CIV S-04-0427 GEB DAD P

vs.

FOLSOM STATE PRISON, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

On December 17, 2004, defendants filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b) arguing that plaintiff had failed to exhaust his administrative remedies. Plaintiff was granted four extensions of time to file opposition to that motion. In the court's order, filed on April 19, 2005, plaintiff was advised that his failure to file his opposition by April 25, 2005 would result in a recommendation that this action be dismissed. Nonetheless, plaintiff has not filed an opposition to the motion.

Local Rule 78-230(m) provides in part: "Failure of the responding party to file written opposition or to file a statement of no opposition may be deemed a waiver of any opposition to the granting of the motion" On October 8, 2004 plaintiff was advised of the requirement of filing an opposition to a motion to dismiss and that failure to oppose such a motion may be deemed a waiver of opposition to the motion.

1 Accordingly, plaintiff's failure to oppose should be deemed a waiver of
2 opposition to the granting of the motion. IT IS HEREBY RECOMMENDED that:

- 3 1. Defendants Shepherd, Schievelbein, Rimmer, Runnels, and Des Voignes'
4 December 17, 2004 motion to dismiss, be granted; and
5 2. This action be dismissed.

6 These findings and recommendations are submitted to the United States District
7 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
8 days after being served with these findings and recommendations, any party may file written
9 objections with the court and serve a copy on all parties. Such a document should be captioned
10 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
11 shall be served and filed within ten days after service of the objections. The parties are advised
12 that failure to file objections within the specified time may waive the right to appeal the District
13 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

14 DATED: May 13, 2005.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

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